IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

WP(C).No. 3685 of 2007(L)

AGAINST THE ORDER DATED 20 /01 / 2007 IN IA 7699/2006 IN OS.163/2005 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

V.U.BALACHANDRAN, AGED 37,
S/O.M.K.NAMBOOTHIRI, PROPRIETOR,
M/S.SOWRASHTRA SALES CORPORATION,
MOHAN VILLA, LAYAM ROAD, KOCHI-11.

BY ADV. SRI.B.RAMACHANDRAN
SMT.P.N.INDU

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED
BY SECRETARY, MINISTRY OF LAW,
GOVT.SECRETARIATE, THIRUVANANTHAPURAM.

2. M.SANTHOSH KUMAR, PWD CONTRACTOR,
GOKULAM EASWARAN THAMPI,
KALLIYAN P.O., THIRUVANANTHAPURAM-5.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)3685/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF JUDGMENT IN W.P.(C)3340/06 DATED 6.2.06.

EXT.P2: TRUE COPY OF DECREE DATED 12.4.06 IN O.S.163/05.

EXT.P3: TRUE COPY OF E.P.NO.386/06 DATED 21.11.06.

EXT.P4: TRUE COPY OF AFFIDAVIT AND PETITION IN I.A.7699/06.

EXT.P5: TRUE COPY OF MEMO DATED 2.1.07.

EXT.P6: TRUE COPY OF INVITATION CARD DATED 9.2.07.

EXT.P7: TRUE COPY OF ORDER DATED 20.1.07 IN I.A.7699/06 IN O.S.163/05.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.3685 OF 2007

DATED THIS THE 5th DAY OF FEBRUARY, 2007

JUDGMENT

Petitioner is decree holder in O.S.163/05 on the file of Sub Court, Ernakulam. As per order of attachment under Order XXXVIII Rule 5 of Code of Civil Procedure, fixed deposit amount due to defendant was attached and it was deposited and fixed deposit receipt was produced before the trial Court. The suit was decreed exparte. Petitioner filed I.A.7699/06 to release the amount. Under Ext.P7 order, learned Sub Judge dismissed the application. This petition is filed under Article 227 of Constitution of India challenging the order contending that learned Sub Judge should have released the amount.

2. Learned Counsel appearing for petitioner was heard.

3. Arguments of learned Counsel appearing for petitioner was that as marriage of petitioner's sister is fixed on 9.2.07, learned Sub Judge should have released the amount.

4. As rightly found by learned Sub Judge under Ext.P7 order, when an amount is attached before judgment and a decree is passed, petitioner is entitled to get the amount only by executing the decree.

Petitioner is at liberty to file an application in the execution

petition pending before learned Sub Judge. If such an application is filed, learned Sub Judge to pass appropriate order in accordance with law without delay.

M.SASIDHARAN NAMBIAR,JUDGE

Acd